

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 28, 2005
Date

Honorable David Dewhurst
President of the Senate

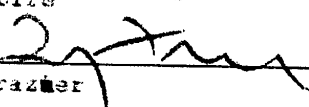
Honorable Tom Craddick
Speaker of the House of Representatives

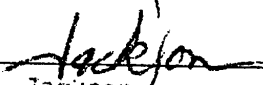
Sirs:

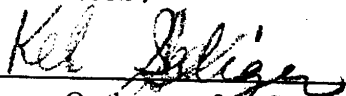
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. No. 2201 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


Estes


Ertel



Frazier


Jackson

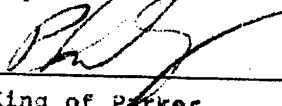

Seliger

On the part of the Senate


Hughes


Cook of Colorado


Hopson


King of Parker

On the part of the House
Kolthorst

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2201

A BILL TO BE ENTITLED

AN ACT

relating to implementing a clean coal project in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) this state produces the most energy in the country and is the largest consumer of coal in the country;

(2) the generation of electric energy in this state by coal-powered generation is estimated to be 37 percent of the electric energy generation in this state;

(3) affordable electric energy in this state is founded on low-cost coal-powered generation;

(4) energy production has a significant role in providing permanent, well-paid employment in this state for this state's growing population, and the energy production industry provides income and revenue that ensures this state may continue to provide a high standard of services to this state's residences and businesses;

(5) the United States Department of Energy's proposed

1 FutureGen research into integrated carbon sequestration and
2 hydrogen research provides for \$800 million in federal funding
3 and \$200 million in funding by private industry and other
4 countries;

5 (6) it is a priority for this state to secure funding
6 under the United States Department of Energy's proposed
7 FutureGen programs because to do so will help this state to
8 become a world leader in innovative energy technologies and is
9 expected to:

10 (A) create more than 11,000 new jobs in this
11 state;

12 (B) provide compensation for workers of more
13 than \$374.3 million;

14 (C) generate \$98 million in tax revenue; and

15 (D) result in a total economic benefit to this
16 state of \$1.2042 billion;

17 (7) FutureGen projects will provide this state with
18 an opportunity to meet this state's energy demands and lower
19 emissions of air contaminants, so the FutureGen technologies
20 should be encouraged for use in electric energy generation;

21 (8) this state is in a unique position to secure
22 funding under FutureGen projects since this state has:

23 (A) a ready source of coal and lignite to fuel
24 FutureGen projects;

25 (B) appropriate geological features for storing
26 carbon dioxide;

27 (C) a market for energy produced; and

1 (D) electric energy transmission resources
2 capable of carrying the resulting power loads;

3 (9) this state has 31 billion barrels of oil in
4 depleted oil fields that could be recovered by means of carbon
5 dioxide enhanced recovery;

6 (10) carbon dioxide from FutureGen projects could be
7 used to recover three billion barrels of oil and generate \$4
8 billion in tax revenue for this state;

9 (11) hydrogen produced by FutureGen projects could be
10 used to fuel fuel cells and for this state's petrochemical
11 industry to manufacture products;

12 (12) to facilitate construction of one or more
13 components of the FutureGen projects at a new or existing
14 electric generating, steam production, or industrial products
15 facility is in the best interest of all of this state's
16 residents; and

17 (13) streamlining procedural processes as necessary
18 to ensure predictability in this state's regulatory scheme will
19 improve this state's position for obtaining federal funding and
20 will preserve the environmental protection obtained by present
21 substantive regulatory standards.

22 SECTION 2. Section 2305.037, Government Code, is amended
23 to read as follows:

24 Sec. 2305.037. INNOVATIVE ~~[RENEWABLE]~~ ENERGY DEMONSTRATION
25 PROGRAM. (a) The energy office is the supervising state agency
26 of the innovative ~~[renewable]~~ energy demonstration program and
27 shall distribute grant money under the program for demonstration

1 projects that develop sustainable and innovative ~~[renewable]~~
2 energy resources, including:

3 (1) a clean coal project, as defined by Section
4 5.001, Water Code;

5 (2) a gasification project for a coal and biomass
6 mixture;

7 (3) photovoltaic, biomass, wind, and solar
8 applications; and

9 (4) [+2+] other appropriate low-emission, renewable,
10 and sustainable energy applications.

11 (b) Contingent on the selection of a Texas site for the
12 location of the coal-based integrated sequestration and hydrogen
13 project to be built in partnership with the United States
14 Department of Energy, commonly referred to as the FutureGen
15 project, and to the extent that funds are appropriated for this
16 purpose, the energy office shall distribute to the managing
17 entity of the FutureGen project an amount equal to 50 percent of
18 the total amount invested in the project by private industry
19 sources. The managing entity of the FutureGen project shall
20 provide records as considered necessary by the energy office to
21 justify grants under this subsection. Cumulative distributions
22 under this subsection may not exceed \$20 million.

23 (c) The energy office may require a grant recipient under
24 the program to match a grant in a ratio determined by the energy
25 office.

26 SECTION 3. Subchapter C, Chapter 382, Health and Safety
27 Code, is amended by adding Section 382.0565 to read as follows:

1 Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE.

2 (a) The United States Department of Energy may specify the
3 FutureGen emissions profile for a project in that department's
4 request for proposals or request for a contract. If the United
5 States Department of Energy does not specify in a request for
6 proposals or a request for a contract the FutureGen emissions
7 profile, the profile means emissions of air contaminants at a
8 component of the FutureGen project, as defined by Section 5.001,
9 Water Code, that equal not more than:

10 (1) one percent of the average sulphur content of the
11 coal or coals used for the generation of electricity at the
12 component;

13 (2) 10 percent of the average mercury content of the
14 coal or coals used for the generation of electricity at the
15 component;

16 (3) 0.05 pounds of nitrogen oxides per million
17 British thermal units of energy produced at the component; and

18 (4) 0.005 pounds of particulate matter per million
19 British thermal units of energy produced at the component.

20 (b) As authorized by federal law, the commission by rule
21 shall implement reasonably streamlined processes for issuing
22 permits required to construct a component of the FutureGen
23 project designed to meet the FutureGen emissions profile.

24 (c) When acting under a rule adopted under Subsection (b),
25 the commission shall use public meetings, informal conferences,
26 or advisory committees to gather the opinions and advice of
27 interested persons.

1 (d) The permit processes authorized by this section are
2 not subject to the requirements relating to a contested case
3 hearing under this chapter, Chapter 5, Water Code, or
4 Subchapters C-G, Chapter 2001, Government Code.

5 (e) This section does not apply to an application for a
6 permit to construct or modify a new or existing coal-fired
7 electric generating facility that will use pulverized or
8 supercritical pulverized coal.

9 SECTION 4. Subchapter C, Chapter 171, Tax Code, is amended
10 by adding Section 171.108 to read as follows:

11 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
12 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS
13 STATE. (a) In this section, "clean coal project" has the
14 meaning assigned by Section 5.001, Water Code.

15 (b) A corporation may deduct from its apportioned taxable
16 capital the amortized cost of equipment or from its apportioned
17 taxable earned surplus 10 percent of the amortized cost of
18 equipment:

19 (1) that is used in a clean coal project;

20 (2) that is acquired by the corporation for use in
21 generation of electricity, production of process steam, or
22 industrial production;

23 (3) that the corporation uses in this state; and

24 (4) the cost of which is amortized in accordance with
25 Subsection (c).

26 (c) The amortization of the cost of capital used in a
27 clean coal project must:

1 (1) be for a period of at least 60 months;
2 (2) provide for equal monthly amounts;
3 (3) begin in the month during which the equipment is
4 placed in service in this state; and
5 (4) cover only a period during which the equipment is
6 used in this state.

7 (d) A corporation that makes a deduction under this
8 section shall file with the comptroller an amortization schedule
9 showing the period for which the deduction is to be made. On
10 the request of the comptroller, the corporation shall file with
11 the comptroller proof of the cost of the equipment or proof of
12 the equipment's operation in this state.

13 (e) A corporation may elect to make the deduction
14 authorized by this section from apportioned taxable capital or
15 apportioned taxable earned surplus, but not from both, for each
16 separate regular annual period. An election for an initial
17 period applies to the second tax period and to the first regular
18 annual period.

19 SECTION 5. Section 313.024(b), Tax Code, is amended to
20 read as follows:

21 (b) To be eligible for a limitation on appraised value
22 under this subchapter, the corporation or limited liability
23 company must use the property in connection with:

24 (1) manufacturing;
25 (2) research and development;
26 (3) a clean coal project, as defined by Section
27 5.001, Water Code;

1 (4) a gasification project for a coal and biomass
2 mixture; or

3 (5) [~~43~~] renewable energy electric generation.

4 SECTION 6. Section 5.001, Water Code, is amended by
5 amending Subdivisions (2) and (3) and adding Subdivisions (4),
6 (5), (6), and (7) to read as follows:

7 (2) "Commission" means the Texas [~~Natural Resource~~
8 ~~Conservation~~] Commission on Environmental Quality.

9 (3) "Executive director" means the executive director
10 of the Texas [~~Natural Resource Conservation~~] Commission on
11 Environmental Quality.

12 (4) "Clean coal project" means the installation of
13 one or more components of the coal-based integrated
14 sequestration and hydrogen research project to be built in
15 partnership with the United States Department of Energy,
16 commonly referred to as the FutureGen project. The term
17 includes the construction or modification of a facility for
18 electric generation, industrial production, or the production of
19 steam as a byproduct of coal gasification to the extent that the
20 facility installs one or more components of the FutureGen
21 project.

22 (5) "Coal" has the meaning assigned by Section
23 134.004, Natural Resources Code.

24 (6) "Component of the FutureGen project" means a
25 process, technology, or piece of equipment that:

26 (A) is designed to employ coal gasification
27 technology to generate electricity, hydrogen, or steam in a

1 manner that meets the FutureGen project profile;

2 (B) is designed to employ fuel cells to generate
3 electricity in a manner that meets the FutureGen project
4 profile;

5 (C) is designed to employ a hydrogen-fueled
6 turbine to generate electricity where the hydrogen is derived
7 from coal in a manner that meets the FutureGen profile;

8 (D) is designed to demonstrate the efficacy at
9 an electric generation or industrial production facility of a
10 carbon dioxide capture technology in a manner that meets the
11 FutureGen profile;

12 (E) is designed to sequester a portion of the
13 carbon dioxide captured from an electric generation or
14 industrial production facility in a manner that meets the
15 FutureGen profile in conjunction with appropriate remediation
16 plans and appropriate techniques for reservoir characterization,
17 injection control, and monitoring;

18 (F) is designed to sequester carbon dioxide as
19 part of enhanced oil recovery in a manner that meets the
20 FutureGen profile in conjunction with appropriate techniques for
21 reservoir characterization, injection control, and monitoring;

22 (G) qualifies for federal funds designated for
23 the FutureGen project;

24 (H) is required to perform the sampling,
25 analysis, or research necessary to submit a proposal to the
26 United States Department of Energy for the FutureGen project; or

27 (I) is required in a final United States

1 Department of Energy request for proposals for the FutureGen
2 project or is described in a final United States Department of
3 Energy request for proposals as a desirable element to be
4 considered in the awarding of the project.

5 (7) "FutureGen project profile" means a standard or
6 standards relevant to a component of the FutureGen project, as
7 provided in a final or amended United States Department of
8 Energy request for proposals or contract.

9 SECTION 7. Subchapter M, Chapter 5, Water Code, is amended
10 by adding Section 5.558 to read as follows:

11 Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As
12 authorized by federal law, the commission by rule shall
13 implement reasonably streamlined processes for issuing permits
14 required to construct a component of the FutureGen project
15 designed to meet the FutureGen emissions profile as defined by
16 Section 382.0565, Health and Safety Code.

17 (b) When acting under a rule adopted under Subsection (a),
18 the commission shall use public meetings, informal conferences,
19 or advisory committees to gather the opinions and advice of
20 interested persons.

21 (c) The permit processes authorized by this section are
22 not subject to the requirements relating to a contested case
23 hearing under this chapter, Chapter 382, Health and Safety Code,
24 or Subchapters C-G, Chapter 2001, Government Code.

25 (d) This section does not apply to an application for a
26 permit to construct or modify a new or existing coal-fired
27 electric generating facility that will use pulverized or

1 supercritical pulverized coal.

2 SECTION 8. Section 16.053, Water Code, is amended by
3 adding Subsection (r) to read as follows:

4 (r) The board by rule shall provide for reasonable
5 flexibility to allow for a timely amendment of a regional water
6 plan, the board's approval of an amended regional water plan,
7 and the amendment of the state water plan, to facilitate
8 planning for water supplies reasonably required for a clean coal
9 project, as defined by Section 5.001. The rules may allow for
10 amending a regional water plan without providing notice and
11 without a public meeting or hearing under Subsection (h) if the
12 amendment does not:

13 (1) significantly change the regional water plan, as
14 reasonably determined by the board; or

15 (2) adversely affect other water management
16 strategies in the regional water plan.

17 SECTION 9. Subchapter B, Chapter 27, Water Code, is
18 amended by adding Section 27.022 to read as follows:

19 Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION.

20 The commission has jurisdiction over the injection of carbon
21 dioxide produced by a clean coal project, to the extent
22 authorized by federal law, into a zone that is below the base of
23 usable quality water and that is not productive of oil, gas, or
24 geothermal resources by a Class II injection well, or by a Class
25 I injection well if required by federal law.

26 SECTION 10. The heading to Subchapter C, Chapter 27, Water
27 Code, is amended to read as follows:

1 SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

2 SECTION 11. Subchapter C, Chapter 27, Water Code, is
3 amended by adding Section 27.038 to read as follows:

4 Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION.

5 The railroad commission has jurisdiction over injection of
6 carbon dioxide produced by a clean coal project, to the extent
7 authorized by federal law, into a reservoir that is productive
8 of oil, gas, or geothermal resources by a Class II injection
9 well, or by a Class I injection well if required by federal law.

10 SECTION 12. (a) This section takes effect only if Senate
11 Bill No. 831, Acts of the 79th Legislature, Regular Session,
12 2005, or similar legislation providing for funding emerging
13 technologies, is enacted and becomes law.

14 (b) Chapter 490, Government Code, as added by Senate Bill
15 No. 831, Acts of the 79th Legislature, Regular Session, 2005, is
16 amended by adding Subchapter G to read as follows:

17 SUBCHAPTER G. CLEAN COAL PROJECTS

18 Sec. 490.301. DEFINITION. In this section, "clean coal
19 project" has the meaning assigned by Section 5.001, Water Code.

20 Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT. (a)
21 Notwithstanding Section 490.102, the governor may allocate money
22 appropriated to the fund by the legislature to provide matching
23 money for a clean coal project as described by Section 2305.037
24 if the governor has the express written prior approval of the
25 lieutenant governor and the speaker of the house of
26 representatives to do so.

27 (b) The governor may allocate proceeds deposited in the

1 fund as provided by an agreement described by Section 490.103 to
2 provide matching money for a clean coal project as described by
3 Section 2305.037 if the governor has the express written prior
4 approval of the lieutenant governor and the speaker of the house
5 of representatives to do so.

6 Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY.
7 Notwithstanding any other provision of this subchapter, a clean
8 coal project constitutes an opportunity for emerging technology
9 suitable for consideration for a grant under Subchapter C,
10 incentives as provided by Subchapter D, grant matching as
11 provided by Subchapter E, and acquisition of research
12 superiority under Subchapter F.

13 SECTION 13. Not later than September 1, 2006:

14 (1) the Texas Water Development Board shall adopt
15 rules under Section 16.053, Water Code, as amended by this Act;

16 (2) the Texas Commission on Environmental Quality
17 shall adopt rules under Section 382.0565, Health and Safety
18 Code, and Section 5.558, Water Code, as added by this Act; and

19 (3) the Railroad Commission of Texas shall adopt
20 rules under Section 27.038, Water Code, as added by this Act.

21 SECTION 14. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas
24 Constitution. If this Act does not receive the vote necessary
25 for immediate effect, this Act takes effect September 1, 2005.

House Bill 2201
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Enumerates findings related to implementing a clean coal project in this state.

SECTION 2. Amends Section 2305.037, Government Code, Innovative Energy Demonstration Program. Among other provisions, requires the energy office to distribute grant money for demonstration projects that develop sustainable and innovative energy resources, including a clean coal project, as defined by Section 5.001, Water Code; photovoltaic, biomass, wind, and solar applications; and other appropriate low-emission, renewable, and sustainable energy applications.

No equivalent provision. *(But see SECTION 6, where this language is added to the Water Code in both versions.)*

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version, except adds coal gasification projects and biomass gasification projects to the demonstration projects that are eligible for grant money. (FA1) Makes a minor wording change.

SECTION __. Adds Section 382.0565, Health and Safety Code, Clean Coal Project Permitting Procedure. Authorizes the U.S. Department of Energy to specify the FutureGen emissions profile in requests for proposals or request for a contract. Provides that if the Department of Energy does not specify the profile, the profile means specified emissions standards. Requires the commission by rule to implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project. Requires the commission to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons when acting under a rule related to issuing the permits. Provides that a related permit proceeding is not a contested case

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Substantially same as Senate version but makes minor word changes.

SECTION 3. Substantially same as Senate version, but makes minor word changes.

House Bill 2201
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 3. Amends Section 171.108, Tax Code. Sets out provisions relating to the deduction of the cost of a clean coal project from taxable capital or taxable earned surplus apportioned to this state.

SECTION 4. Amends Section 313.024(b), Tax Code, to include a clean coal project as defined by Section 5.001 Water Code among the projects that are eligible for a limitation on appraised value.

SECTION 5. Amends Section 5.001, Water Code, relating to definitions for the Texas Commission on Environmental Quality (commission).

SECTION 6. Adds Section 5.558, Water Code, Clean Coal Project Permitting Procedure, as follows:

(a) Authorizes the U.S. Department of Energy to specify the FutureGen emissions profile in requests for proposals or request for a contract. Provides that if the Department of Energy does not specify the profile, the profile means

SENATE VERSION

hearing. Provides that this section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal. (FA2)

SECTION 3. Same as House version, except also provides that "clean coal project" has the meaning assigned by Section 5.001, Water Code. Omits references to a clean coal project being defined by Section 5.001, Water Code.

SECTION 4. Same as House version, except also includes coal gasification projects and biomass gasification projects among the projects. (FA1)

SECTION 5. Same as House version.

SECTION 6. Adds Section 5.558, Water Code, Clean Coal Project Permitting, as follows (FA2):

No equivalent provision.

CONFERENCE

SECTION 4. Same as Senate version.

SECTION 5. Substantially same as Senate version, but makes minor word changes.

SECTION 6. Same as House version.

SECTION 7. Same as Senate version, except as follows:

Same as Senate version.

House Bill 2201
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

specified emissions standards.

(b) Relates to streamlined processes for issuing permits required to construct a component of the FutureGen project.

(c) Relates to requiring the commission to gather the opinions and advice of interested persons.

(d) Provides that a permit application that meets these standards is deemed to be the recommendation of the executive director of the Texas Commission on Environmental Quality and shall be forwarded to the State Office of Administrative Hearings for a contested case hearing.

(e) Provides that this section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

No equivalent provision.

SECTION 7. Amends Section 16.053, Water Code,

SENATE VERSION

(a) Same as House version. (FA2)

(b) Same as House version. (FA2)

No equivalent provision.

No equivalent provision.

(c) Provides that a permit proceeding under the rules adopted under Subsection (a) is not a contested case hearing under Chapter 2001, Government Code, and is not subject to contested case hearing requirements. (FA2)

SECTION 7. Same as House version.

CONFERENCE

(a) Same as House version with minor word changes.

(b) Same as House version.

Same as Senate version.

(d) Same as House version.

(c) Same as Senate version with minor word changes.

SECTION 8. Same as House version.

House Bill 2201
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

relating to planning for water supplies reasonably required for a clean coal project.

SECTION 8. Adds Section 27.022, Water Code, relating to jurisdiction over carbon dioxide injection.

SECTION 9. Amends the heading to Subchapter C, Chapter 27, Water Code.

SECTION 10. Adds Section 27.038, Water Code, relating to jurisdiction over carbon dioxide injection.

SECTION 11. Adds Section 27.039, Water Code, Reservoir Characterization, Remediation, and Monitoring for Carbon Dioxide Sequestration Permit.

SECTION 12. Relates to deadlines regarding this act.

No equivalent provision.

SECTION 13. Effective date.

SENATE VERSION

SECTION 8. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

No equivalent provision.

SECTION 11. Same as House version.

SECTION 12. Establishes that this section takes effect only if related legislation is enacted. Adds Subchapter G, Government Code, Clean Coal Projects, to Senate Bill 831, 79th Legislature.

SECTION 13. Same as House version.

CONFERENCE

SECTION 9: Same as House version.

SECTION 10. Same as House version.

SECTION 11. Same as House version.

Same as Senate version.

SECTION 13. Same as House version.

SECTION 12: Same as Senate version.

SECTION 14. Same as House version.